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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

TROUT UNLIMITED, et al.,

Plaintiffs,

v.

D. ROBERT LOHN, et al.,

Defendants.

and

STATE OF OREGON,

Intervenor-Defendant,

and

ALSEA VALLEY ALLIANCE, et al.,

Intervenor-Defendants.

Civ. No. 3:06-1493-ST-K

**STIPULATED SETTLEMENT
AGREEMENT AND [PROPOSED]
ORDER ON ATTORNEYS'
FEES AND COSTS**

Pursuant to Local Rule 54, this Stipulation is entered into by and between Plaintiffs, the Trout Unlimited ("TU"), and Defendants, D. Robert Lohn, Northwest Regional Administrator of National Marine Fisheries Service ("NMFS") to settle Plaintiffs' claim for attorneys' fees and costs of litigation.

Plaintiffs and Defendants, by and through their undersigned counsel, state as follows:

WHEREAS, NMFS proposed to list the Oregon Coast coho salmon as a threatened species under the Endangered Species Act ("ESA"), 16 U.S.C. § 1533, on June 14, 2005. 69 Fed. Reg. 33102 (June 13, 2004).

WHEREAS, NMFS withdrew its proposal to list the Oregon Coast coho salmon as a threatened species on January 16, 2006. 71 Fed. Reg. 3033 (Jan. 16, 2006).

WHEREAS, Plaintiffs challenged the withdrawal of the proposed listing rule, alleging that NMFS' reliance on a new viability assessment prepared by the State of Oregon to support its withdrawal of the proposed rule violated the ESA and the Administrative Procedure Act, 5 U.S.C. 706.

WHEREAS, on July 13, 2007, the Magistrate Judge issued Findings and a Recommendation to grant Plaintiffs' motion for summary judgment and to deny Defendants' motion for summary judgment.

WHEREAS, on October 5, 2007, the District Judge adopted the Magistrate Judge's Findings and Recommendations, granted Plaintiffs' motion for summary judgment, denied Defendants' motion for summary judgment, and entered judgment for the Plaintiffs.

WHEREAS, on Defendants' motion, the District Court entered an amended judgment on October 26, 2007, ordering Defendants to issue a revised listing rule for the Oregon Coast coho

salmon within 120 days.

WHEREAS, Plaintiffs moved for an award of fees and costs pursuant to 15 U.S.C. 1540(g).

WHEREAS, Plaintiffs and Defendants stipulated to stay proceedings on Plaintiffs' motion for fees and costs pending resolution of an appeal to the Ninth Circuit by Defendant-Intervenors, Alsea Valley Alliance.

WHEREAS, on September 5, 2008, the Ninth Circuit issued the mandate dismissing Defendant-Intervenors' appeal.

WHEREAS, Plaintiffs and Defendants have reached an agreement as to an appropriate settlement of Plaintiffs' motion for fees and costs and agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve Plaintiffs' motion.

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Defendants agree to pay to Plaintiffs reasonable attorneys' fees and costs in this matter, pursuant to Section 11(g)(1)(C) of the ESA, 16 U.S.C. § 1540 (g)(1)(C). Defendants agree to settle all of Plaintiffs' claims for costs and attorneys' fees in the above-captioned litigation for a total of \$122,014.79. A check will be made payable in that amount to Earthjustice, 705 Second Avenue, Suite 203, Seattle, WA 98104. At Plaintiffs' request, Defendants will transmit payment electronically by Electronic Funds Transfer rather than by check.
2. Defendants agree to submit all necessary paperwork for the processing of the attorneys' fee award to the Department of the Treasury's Judgment Fund Office, within ten business days of receipt of the court order approving this stipulation.
3. Plaintiffs agree to accept payment of \$122,014.79 in full satisfaction of any and all

claims for attorneys' fees and costs of litigation to which Plaintiffs are entitled in the above-captioned litigation, through and including the date of this agreement.

4. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter, through and including the date of this agreement.

5. The parties agree that this Settlement Agreement was negotiated in good faith and it constitutes a settlement of claims that were vigorously contested, denied, and disputed by the parties. By entering into this Agreement the parties do not waive any claim or defense.

6. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

7. The terms of this Agreement shall become effective upon entry of an order by the Court ratifying the Agreement.

It is so stipulated this 14th day of November 2008.

s/ Jan E. Hasselman (with permission)

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Pursuant to stipulation it is so ordered.

Dated: 12-1-08


UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on November, 13, 2008, I caused a copy of the foregoing Stipulated Settlement Agreement and Proposed Order to be served electronically on the following counsel, by filing it with the District of Oregon electronic case filing system:

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